

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4 SECURITIES AND EXCHANGE * 4:14-CV-02345
5 COMMISSION *
6 VS. * 2:59 P.M.
7 *
8 ANDREW I. FARMER, ET AL * APRIL 12, 2017

9 HEARING ON MOTIONS
10 BEFORE THE HONORABLE KEITH P. ELLISON
11 VOLUME 1 OF 1 VOLUME

12 **APPEARANCES:**

13 **FOR THE PLAINTIFF:**

14 Mr. Matthew J. Gulde
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18 817-978-1410

19 **FOR THE DEFENDANT, ANDREW I. FARMER:**

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31 **ALSO IN ATTENDANCE:**

32 Mr. Andrew I. Farmer

33 Court Reporter:
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37 Proceedings recorded by mechanical stenography.
38 Transcript produced by computer-assisted transcription.

1 **PROCEEDINGS**

03:02:07

2 THE COURT: Good afternoon and welcome. We are
3 here in Securities and Exchange Commission v. Farmer. We
4 will take appearances of counsel, beginning with the
5 commission.

6 MR. GULDE: Good afternoon, Your Honor. Matt
7 Gulde for the SEC.

8 THE COURT: Mr. Gulde.

03:02:14

9 MR. EDMUNDSON: Good afternoon, Your Honor.
10 Kevin Edmundson for Mr. Farmer. And also on the phone
11 we've not Jeff Ansley, who is cocounsel.

12 MR. ANSLEY: Your Honor, this is Jeff Ansley for
13 Andrew Farmer.

03:02:25

14 THE COURT: Thank you. I'm going to ask the
15 lawyers in the courtroom to speak at this microphone
16 upfront because it's the only one that carries to those
17 that are participating by phone.

03:02:41

18 Okay. I'm, of course, very familiar with this case;
19 and I have read all the writings that have been submitted,
20 the renewed motion to vacate order on summary judgment or
21 alternatively to stay the proceedings. It is defendant's
22 motion. Please don't repeat what is in the writings; but
23 if you have new argument, this is the time for it.

24 MR. EDMUNDSON: Okay.

03:02:58

25 THE COURT: Again, please speak from the rostrum.

1 MR. EDMUNDSON: Thank you, Your Honor. As you
2 know, this is -- this motion to vacate was filed, I think,
3 last June; and it has gone through a few twists and turns.
4 We have had status conferences.

03:03:16

5 THE COURT: Yes.

6 MR. EDMUNDSON: The original motion was focused
7 on the new witness Charles Grob.

03:03:33

8 What I thought I would do today is focus on the second
9 new witness that we allege or that we contend has provided
10 material information that we didn't have.

11 THE COURT: Mr. Massey, yeah.

12 MR. EDMUNDSON: Mr. Massey.

13 THE COURT: For the court reporter, M-a-s-s-e-y.

03:03:44

14 MR. EDMUNDSON: Your Honor, for convenience I
15 thought I would direct the Court to our reply brief, which
16 is Document Number 127.

17 THE COURT: I do have that, yeah.

03:03:55

18 MR. EDMUNDSON: And that document, I believe,
19 really encapsulates the heart of the issue as it relates
20 to Mr. Massey. The situation simply is Mr. Massey is a
21 material witness. He is a codefendant with Mr. Farmer in
22 the criminal case.

03:04:13

23 During the pendency of the summary judgment process he
24 apparently reached out to the SEC and to the FBI and
25 provided statements. Prior to that, he had been asserting

1 his Fifth Amendment privilege.

2 While the summary judgment motions were pending, he
3 provided statements, which are attached at Exhibit
4 Number 1 to the reply brief at Document Number 127.

03:04:32

5 We believe that, like Mr. Grob, these statements
6 create materially -- material disputed facts in this case
7 and should be considered by the Court and would prompt the
8 Court to vacate the order because facts are in dispute;
9 and as a matter of law, summary judgment is not

03:04:53

10 appropriate.

11 THE COURT: Didn't -- wasn't the nub of
12 Mr. Massey's story one that was designed to incriminate
13 Mr. Farmer, who purportedly owed Mr. Massey's father a
14 large sum of money, without also implicating Massey? I
15 mean, I think that's self-serving testimony, of course, to
16 exonerate yourself and inculcate somebody else. But
17 wasn't that what was going on with Mr. Massey's story?

03:05:10

18 MR. EDMUNDSON: Well, I mean, based upon the
19 notes, I think that's part of it. What we also know from
20 the notes is that Mr. Massey told the SEC, assuming these
21 notes are accurate, that China Inland was a real entity.

03:05:25

22 THE COURT: Say that again, please.

23 MR. EDMUNDSON: China Inland was a real entity.

24 THE COURT: China Inland, yeah.

03:05:41

25 MR. EDMUNDSON: Massey and Chimera had a capsule

1 prototype relating to NHE technology. Mr. Massey also
2 stated, referring to NHE, the technology was real and
3 Haliburton is using something similar.

4 Those are new facts. Facts and -- and material to
5 this dispute. This dispute in large part is about a
6 fraudulent pump of a stock --

7 THE COURT: Yeah.

8 MR. EDMUNDSON: -- that started with what the
9 government contends is a fictitious licensing agreement
10 with China Inland and fictitious NHE technology, and the
11 Court's order credited that -- that factual finding. In
12 fact, the order at Pages 6 and 7 found that the NHE
13 technology and China Inland itself were fictitious.

14 Part of the SEC's argument was that there wasn't a
15 defendant or even a non-party who provided any evidence to
16 validate the existence of China Inland or the NHE
17 technology. Now we have a witness who told the SEC that
18 China Inland was a real entity and that there was a
19 capsule prototype of the technology.

20 THE COURT: But I mean, if we give full credit to
21 what Massey said -- and some of it is pretty inconsistent,
22 it seems to me -- don't we still have the fact that in
23 violation of Section 17(a) (2) of the Securities Act
24 Mr. Farmer used the registration statement which omitted
25 the fact that Farmer was entirely financing the IPO to

03:07:43

1 obtain money; and in violation of Section 17(a) (2), Farmer
2 used the statement to FINRA, all caps, F-I-N-R-A, which
3 concealed Farmer's role in Chimera, C-h-i-m-e-r-a, in
4 relationship with Grob, G-r-o-b, and numerous false
5 statements to the broker dealer Pennaluna,
6 P-e-n-n-a-l-u-n-a.

7 I mean, all these remain untouched by anything Massey
8 said, right?

03:07:56

9 MR. EDMUNDSON: Based upon these notes, I don't
10 believe he addressed those issues; but I don't know what
11 else he knows. I mean, these are the statements that he
12 made to the SEC. They are bullet-point notes. I don't
13 know what else was said. I don't know if these are
14 complete. I don't know what else he knows.

03:08:10

15 But apparently, between Grob and Massey, Grob being
16 the former CEO and Massey being the material witness,
17 particularly as to activities relating to Pemex in Mexico,
18 I mean, it could be a treasure trove of information about
19 other issues in this case.

03:08:30

20 THE COURT: Couldn't -- I mean, I would have
21 thought that Mr. Farmer would have better luck getting
22 information about -- out of Mr. Massey than others. I
23 mean, he could have gone and gotten this information from
24 Massey, couldn't he?

03:08:42

25 MR. EDMUNDSON: He could have, except Mr. Massey

1 had taken five in the investigation and continued to
2 represent to us that he would continue to take five in
3 this case.

03:08:57

4 THE COURT: Well, we could attest to that though
5 with a subpoena, couldn't we? Well, anyway. Okay.
6 That's what he did. You are right. That's what he did.

03:09:20

7 MR. EDMUNDSON: Your Honor, look. One point
8 that -- that I do want to emphasize. The SEC had made a
9 representation to the Court in its statement of undisputed
10 facts about China Inland that it was fictitious and the
11 technology was fictitious.

03:09:34

12 Yet at the same time, they have got a witness that's
13 coming in and telling them, well, wait a second. That
14 technology is real, and I'm aware of the capsule
15 prototype. And I believe that Haliburton is actually
16 testing the same technology.

03:09:54

17 Well, that might very well provide, if we could test
18 that with Mr. Massey, what do you know about that? That
19 may flatly contradict the allegations made by the SEC at
20 that time and the conclusions in the order. And we -- you
21 know, it's material.

03:10:12

22 The other -- and I would point out, Your Honor, in the
23 reply brief again, Document 127, Massey did provide
24 information about Jose Quiroga and Pemex in Mexico.
25 Apparently, Massey was in Mexico. He was participating in

1 these negotiations. He stated that some of the
2 allegations in the SEC complaint against Farmer related to
3 Pemex are not accurate.

4 THE COURT: Slowly. Slowly now.

03:10:28

5 MR. EDMUNDSON: Excuse me. He says -- Massey
6 says he met Jose Quiroga. Massey also said Quiroga was a
7 Pemex employee, but Quiroga was not his real last name.

03:10:47

8 These are facts. I mean, the central issue of the
9 case in large part, this fraud case, relates to these
10 false press releases, which Mr. Farmer didn't -- I mean,
11 there was no allegation that Mr. Farmer had anything to do
12 with the writing of those press releases or the editing or
13 approving the release of these press releases. Yet they
14 have been found to be false.

03:11:03

15 And now we have a witness who apparently could provide
16 meaningful information about that aspect of the case, and
17 I don't know what else he could talk about. He may be
18 able to talk about the registration or the negotiations
19 with Pennaluna. I don't know, Your Honor.

03:11:20

20 But we have two new witnesses in this case that, based
21 upon what they have stated so far -- Mr. Grob in court,
22 Mr. Massey in his statements to the SEC as reflected in
23 these notes -- there are inconsistencies in the record.
24 Your Honor recognized that when Mr. Grob testified.

03:11:43

25 But there are also inconsistencies with Massey's facts

1 and the facts that are in the order. What I think -- and,
2 Your Honor, I would urge you to consider allowing us to
3 depose Mr. Massey, as we did with Mr. Grob. Mr. Massey
4 has spoken to the government on five separate occasions,
5 beginning in August of 2015. We would like --

03:12:06

6 THE COURT: I just asked a little while ago why
7 you didn't go talk to Massey. Are you saying now you are
8 sure he won't take the Fifth Amendment?

9 MR. EDMUNDSON: Well, he has talked to the
10 government five times.

03:12:21

11 THE COURT: Well, Grob has taken it and not taken
12 it. I mean, I don't know what the pattern is here.

13 MR. EDMUNDSON: Right. I think we would like to
14 explore that. I mean, I think in this context, because
15 Massey has spoken so freely with the government, that he
16 has probably waived his Fifth Amendment; and we would
17 press that, Your Honor.

03:12:30

18 You know, I mean, obviously, we raise the issue of the
19 FBI 302s. We're not authorized to use them. We tried to
20 get clearance from the U.S. attorney to authorize its use.
21 We cannot get agreement on that issue. But the 302s
22 provide additional supplementary information that I think
23 is very relevant to this case.

03:12:53

24 We're extremely frustrated that the SEC and the U.S.
25 attorney's office are clearly sharing information, the

03:13:08

1 tens of thousands of e-mails, for example, that became an
2 issue after we filed our original motion to vacate; but we
3 can't even use the 302 statements that Mr. Massey -- that
4 the FBI wrote about Mr. Massey's statements in the course
5 of those interviews. And we think it is just very
6 frustrating.

7 I think one remedy here is to allow us to take his
8 deposition and see where we stand.

9 The other thing, Your Honor, is the criminal trial is
10 right around the corner. It's now been -- I think in our
11 papers we had given you April of 2017 as a trial date.
12 That's been kicked to June. But it's right around the
13 corner. And all of these issues are going to be tried.

14 And so we would -- we think that there is ample basis
15 to vacate the order; and it may not cover every single
16 issue in the order, based upon what we know from Mr. Grob
17 and Mr. Massey at this point. But there is grounds to
18 vacate the order. Alternatively --

19 THE COURT: The grounds are these two new
20 witnesses?

21 MR. EDMUNDSON: Absolutely.

22 THE COURT: Okay. All right.

23 MR. EDMUNDSON: And alternatively allow us to
24 depose Mr. Massey and report back, as we did with
25 Mr. Grob, or alternatively stay the case. This case is

1 going to get tried. Thank you.

2 THE COURT: Okay. Thank you. Mr. Gulde.

3 MR. GULDE: Your Honor, I heard a couple of
4 things that really left me scratching my head. Most
03:14:49 5 recently, Mr. Edmundson's contention that Massey has
6 probably waived his Fifth Amendment privilege. I would
7 agree with that. He called Mr. Vydashenko and I
8 unsolicited --

9 THE COURT: Spell Vydashenko for the court
03:15:03 10 reporter, please.

11 MR. GULDE: I will do my best.

12 THE COURT: She has got it. She has already got
13 it. You are saved.

14 MR. GULDE: Thank goodness.

03:15:12 15 So we probably agree with that that he has waived it,
16 but that brings some cognitive dissidence here in this
17 case. Because just as Mr. Massey has probably waived it,
18 Mr. Grob certainly waived it. He sat right there and
19 testified in this case.

03:15:24 20 And Mr. Edmundson came up here and said, on behalf of
21 Mr. Farmer, we need to depose Mr. Grob because of what he
22 said there. And Your Honor said on the phone conversation
23 that we had with counsel that you didn't find, you know,
24 what he said in court to really turn you around; but they
03:15:41 25 wanted to go further and depose him. So you let him do

1 it.

2 When they had the opportunity to do it, Mr. Grob took
3 five. And not only did he assert his rights under the
4 Fifth Amendment, but Mr. Edmundson seemed to be asking
03:15:58 5 leading questions to paper his assertion to the Fifth.

6 They didn't come back to the Court to say, wait a
7 minute, didn't you say, Your Honor, or doesn't it look
8 like he has waived his Fifth Amendment privilege here?
9 They didn't do that.

03:16:11 10 The only thing I can come up with, Your Honor, is they
11 really don't want to hear what he has to say. They want
12 the appearance of having been wronged here without, you
13 know, mitigating that by the -- by use of the deposition
14 that you allowed them to take.

03:16:27 15 And it's understandable that they don't want to hear
16 what he has to say because you also heard him bury
17 Mr. Farmer as to the sham IPO that Mr. Farmer gave him the
18 playbook to run.

19 So just stepping back for a second and looking at the
03:16:43 20 overall standard here, Rule 60(b) offers extraordinary
21 relief. He has got to show -- Mr. Farmer has to
22 show newly discovered --

23 THE COURT: Newly discovered and it would change
24 the results.

03:16:57 25 MR. GULDE: And diligence. He has got to show

1 reasonable diligence in having sought that evidence
2 beforehand.

03:17:12

3 Your Honor pointed out that, you know, as the
4 additional background to that are all of these things --
5 the 17(a)(2) violations, the 10(b)(5) allegations, the
6 Rule 5 registration violations. None of this so-called
7 new evidence would touch any of that. So that's part of
8 the background, too.

03:17:30

9 And Mr. Edmundson said -- and I had to write this
10 down -- you know, I don't know what else he knows. There
11 could be a treasure trove in there. That sounds to me,
12 Your Honor, like the very definition of a fishing
13 expedition. And that speaks directly to the issue of
14 whether or not Mr. Farmer and his counsel exercised
15 reasonable diligence to get ahold of any of this
16 information beforehand or at the relevant time during
17 civil litigation. They did not.

03:17:48

03:18:08

18 First of all, as to Mr. Grob, we talked about that,
19 that they didn't really -- that they didn't come back and
20 move to compel. And just one point on that that they
21 brought up in the briefing. The idea -- they allege that
22 the SEC somehow sprung the idea of a federal criminal
23 investigation on Mr. Grob and Mr. Farmer, somehow
24 strategically timed right before Mr. Grob's deposition in
25 order to somehow bully him into not testifying or

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1 asserting the Fifth.

03:18:44

2 First of all, that's completely absurd because it's
3 always been our position since he sat up there and
4 testified -- actually, since he made that self-serving
5 declaration in response to our penalty briefing that
6 Mr. Grob had waived his right to assert the Fifth
7 Amendment privilege.

03:18:59

8 But additionally, Mr. Farmer and Mr. Grob were aware
9 of the possibility and Mr. Farmer, as we pointed out in
10 our briefing, had briefed to the criminal court when
11 trying to amend his terms of supervised release that he
12 had known about it for over a year and this was -- this
13 would have been --

14 THE COURT: Known about which now?

03:19:15

15 MR. GULDE: He had known about the federal
16 criminal investigation and did not flee. He was saying,
17 look, I'm not a flight risk. I have known about this for
18 more than a year.

03:19:27

19 That flies directly in the face of kind of the
20 mud-slinging allegation that they threw kind of
21 desperately to somehow make it look like they are wrongly
22 being withheld Mr. Grob's testimony.

03:19:45

23 Now, as to Thomas Massey -- and it's my belief that
24 Mr. Massey has scheduled a change of plea hearing --
25 that's what the criminal docket is telling me -- for

1 Tuesday. So that shines --

2 THE COURT: To plead guilty?

3 MR. GULDE: I don't know, Your Honor. I haven't
4 spoken with the prosecutors about that. That's my
5 assumption.

03:19:58

6 But it sheds some light, possible light on their
7 motivation here now to really want to hear what he has to
8 say. If Thomas Massey is going to plead guilty, maybe he
9 is going to testify against Mr. Farmer. And certainly
10 Mr. Farmer would like to know what he has to say for the
11 criminal matter. So using the civil discovery to help him
12 in the criminal matter is inappropriate.

03:20:10

13 But that's kind of beside the point. Rule 60(b),
14 reasonable diligence, simply is not there. And another
15 thing that Mr. Edmundson said that I'm just dumbfounded
16 here. He said prior to that, meaning prior to Mr. Massey
17 calling us unsolicited while we were doing summary
18 judgment briefing, Mr. Massey had been asserting his Fifth
19 Amendment privilege.

03:20:28

20 Mr. Massey asserted his Fifth Amendment privilege in
21 response to an investigative subpoena prior to the filing
22 of this complaint. We didn't notice his deposition. So
23 we don't know. The SEC doesn't know if he was asserting
24 his -- if he would have asserted his rights during the
25 litigation.

03:20:51

03:21:09

1 And this right here, a few minutes ago, is the first
2 time in all of the briefing and in all of our
3 conversations that Mr. Edmundson has ever claimed that
4 Mr. Massey had been informing them that he would assert it
5 if called to testify.

03:21:26

6 You pointed out they didn't test that with the
7 subpoena. So it's one thing to say you are going to do
8 it. It's another thing to actually do it when subpoenaed.

9 But I'm not even sure that's credible. There is
10 nothing in the record. There is no declaration from
11 Mr. Farmer. There is no declaration from an attorney
12 saying they contacted Mr. Massey who said that if called
13 to testify in the litigation he would assert his Fifth
14 Amendment.

03:21:39

15 As a little more background on him contacting us, he
16 spoke with us. Those notes -- I relayed those notes or
17 relayed my recollections of what Mr. Massey had told me to
18 the AUSA, Mr. Martin. And Mr. Martin apparently
19 memorialized that. And that's what ended up getting
20 Mr. Farmer, and that's what is in the briefing that you
21 have seen.

03:21:52

03:22:18

22 Those conversations were in the hopes of setting up --
23 we still thought there was going to be a trial. We hoped
24 to have Thomas Massey as a witness. He was certainly
25 disclosed, I would assume by both parties and certainly by

03:22:33

1 us, in our Rule 26 disclosure as a potential witness.

2 He, shortly after contacting us, went into the wind;
3 and we weren't able to talk to him anymore. So he decided
4 to stop talking to us.

03:22:50

5 THE COURT: Did he tell you anything that you
6 think was meant to exonerate Mr. Farmer?

7 MR. GULDE: No, Your Honor. Well, I mean, I
8 can't speak to Mr. Massey's intentions. I mean, his --

03:23:08

9 THE COURT: Do you think that that was his
10 purpose?

11 MR. GULDE: It seemed to be self-serving
12 testimony that --

13 THE COURT: Putting it on Mr. Farmer, not
14 exonerating Mr. Farmer.

03:23:15

15 MR. GULDE: It blamed Mr. Farmer on the parts
16 that Mr. Massey was clean of. So the parts that -- the
17 parts where he could safely inculcate Mr. Farmer, he did
18 so. And certainly, he made the statements that
19 Mr. Edmundson has been hammering about Pemex and about the
20 viability of nonhydraulic fracking, as well. But because
21 those are kind of in his realm, he was a little softer on
22 those.

03:23:33

23 But -- and first of all, Your Honor is exactly right.
24 None of those statements had anything to do with the sham
25 that Mr. Farmer was pulling on the investment side of the

03:23:50

1 stuff. And all of that is completely sufficient to uphold
2 all of the claims against him. Every single claim is
3 satisfied despite even if they hit a home run on Massey
4 and they get everything they want here, you know, barring
5 some, you know, the treasure trove that he is predicting
6 somehow.

7 THE COURT: What would be the next step if I
8 don't vacate? What would be the next step in this case?

9 MR. GULDE: Enter judgment consistent with your
10 oral ruling, disgorgement, penalties and injunctions to
11 Mr. Farmer. That would be what we would request, Your
12 Honor.

13 THE COURT: What is the SEC's experience in these
14 matters when there are parallel civil and criminal
15 proceedings?

16 MR. GULDE: Your Honor, I'm just not sure I can
17 speak to overall experience. I have had very little
18 experience personally with parallel civil and criminal
19 proceedings. My position is that there is no reason to
20 hold this up for any criminal proceeding.

21 THE COURT: Well, it's one of my oldest cases.
22 So I'm reluctant to hold it up on any basis, but I don't
23 know. In your view, there is not a significant
24 possibility that what we learn in the criminal proceeding
25 will impinge on this case?

1 MR. GULDE: That is my view, Your Honor,
2 absolutely and as to the -- I mean, specifically, as to
3 the claims that Mr. Edmundson is making about the
4 viability of the technology, nonhydraulic fracking.

03:25:35 5 And he has talked a lot -- he has said the word
6 "capsule" three or four times as though the existence of
7 some working or some model of what they intended to stick
8 down wells and blow up meant that they had a valid
9 technology.

03:25:51 10 Your Honor, we all knew about this capsule. Mr. Grob
11 sat up there and talked about it. That's not a surprise
12 here. We didn't learn that from Mr. Massey.

13 As to the viability of that, there are two engineers
14 involved in this whole thing, as far as I can tell. One
03:26:07 15 of them is Baldemar Rios; and in his deposition -- which I
16 don't believe Mr. Farmer's lawyers attended. I don't know
17 why -- he said that -- I'm sure they have reviewed the
18 testimony. Mr. Rios said that he attempted to try to get
19 the specifications and the background engineering
03:26:35 20 documents on how this technology would actually work but
21 that he always got stonewalled from Chimera and they would
22 never share with him.

23 So think about what that is. The CEO, the eventual
24 CEO, and we would contend, obviously, the straw man CEO of
03:26:54 25 Chimera, was never allowed to see the technical documents

1 that somehow supported the idea that this technology was
2 viable. That tells us something.

03:27:11

3 The other engineer involved is this man from Pemex who
4 also gave a deposition in this case, Dr. Avila. And
5 Dr. Avila called this science fiction, that it's not real.

03:27:32

6 Now -- so Thomas Massey is going to go work on a
7 ranch. That's what he told us. And he has no technical
8 background. He is not an engineer. It is simply
9 incredible that his opinion -- his lay opinion about
10 whether this is a good thing or whether that capsule meant
11 anything means more than mine, for example, just seeing
12 this on the table right here or hearing about it after
13 Mr. Grob talked about it.

03:27:48

14 Even if we were to believe that Mr. Massey's testimony
15 and that everybody believed they had viable technology,
16 let's say we just believe that and swallow that bait and
17 we're the ideal investor in Mr. Farmer's mind, in the best
18 case, in that best-case scenario from Mr. Farmer, all that
19 Dr. Avila and the Pemex people did was show some
20 willingness to test the capsule in any of their wells.

03:28:13

21 And is that then what Chimera went out and touted to
22 the world of unsuspecting investors? No. They went much
23 further, and they said that it was going to be in use.
24 Their technology would be in use throughout Latin America.
25 They said that Pemex would use it on multiple wells. A

03:28:34

1 far cry from even Thomas Massey and Mr. Farmer's best-case
2 scenario here. It's still misleading, Your Honor.

03:28:57

3 I mean, the big news, I guess, in all this stuff with
4 Massey is that Farmer did not draft most of the press
5 releases. That's not news. We didn't allege that he did.
6 We alleged that he was deeply involved in Chimera and
7 mislead the investing public about that. The Court didn't
8 rely on him drafting all the press releases in its
9 opinion.

03:29:14

10 The fact, apparently, is that John Brotherton appears
11 to have written the press releases. That's John
12 Brotherton who made hundreds of thousands of dollars
13 directly from Mr. Farmer. So somebody on Mr. Farmer's
14 payroll did.

03:29:30

15 So in the end, what do we have here? We have got a
16 sham company that defaulted and just disappeared as soon
17 as it was challenged. They never made a dime on, yes,
18 this fictitious technology. We have --

03:29:48

19 THE COURT: No suggestion it was ever
20 operational, right?

21 MR. GULDE: Never operational, Your Honor.

03:30:05

22 We have investors who bought worthless stock after
23 Farmer spent hundreds of thousands of dollars admittedly
24 in this what he calls a market awareness campaign. And we
25 have Farmer who walked away with all the money. It's

1 undisputed that he told lies to get there and get all that
2 money, Your Honor. Thank you.

3 THE COURT: Okay. Mr. Edmundson.

03:30:26

4 MR. EDMUNDSON: Let me just address the issue
5 with the press releases that Mr. Gulde just referenced.

6 THE COURT: The issue of what?

7 MR. EDMUNDSON: The press releases.

8 THE COURT: The press releases.

03:30:37

9 MR. EDMUNDSON: And Mr. Gulde points out, which
10 we had pointed out before, that Mr. Farmer did not draft
11 or edit the press release.

12 THE COURT: Yeah. I'm willing to accept that.

03:30:47

13 MR. EDMUNDSON: Okay. Unfortunately, it's in the
14 order. Mr. Gulde said it's not in the order. It's at
15 Page 20 of the order. Okay.

16 And the order says, "The metadata on the registration
17 statement, many of the press releases and forms 8-K and
18 the letter to FINRA reveal that these documents were all
19 drafted or edited by defendant."

03:30:57

20 And that is one of the issues that we had been
21 briefing in the motion to vacate that is simply not true,
22 and it was borne out --

23 THE COURT: What page are we on?

24 MR. EDMUNDSON: Page 20 of the order.

03:31:08

25 THE COURT: Okay. Go ahead.

1 MR. EDMUNDSON: You had asked Mr. Gulde about,
2 you know, experience with criminal and civil cases. I
3 worked at the SEC for 18 years. Okay. And I was involved
4 in a lot of parallel proceedings. Typically what happens
5 is the civil case gets stayed, and the criminal case goes
6 forward. In every case, no; but in most cases that's what
7 happens.

8 The capsule prototype, look, there is either a capsule
9 prototype or there isn't. I have never seen it. I don't
10 know that the SEC has ever seen it. But we now have a
11 witness who says that there is one that is in existence.
12 Mr. Gulde said that that wasn't new news because we
13 learned about that from Mr. Grob when he testified. It
14 was new news to me. Besides, Mr. Massey gave that
15 statement to the government months before Mr. Grob
16 testified about it. But I think that's a very relevant
17 fact.

18 The treasure trove of information, I didn't predict
19 that there is going to be a treasure trove of information
20 from Mr. Massey. I said it may be. I mean, based upon
21 these 86 bullet points in the notes, it would appear to me
22 that he is a very significant witness that, I think, has
23 got material information about this case; and it may
24 impact very well the conclusions that the Court reached
25 and described in its order.

1 Mr. Gulde made reference to the re-arraignment next
2 week of Mr. Massey. Yeah, I'm predicting that he has cut
3 a deal with the government; and I believe he is going to
4 be available to testify against Mr. Farmer.

03:32:52 5 We did not create this situation with Mr. Grob or with
6 Mr. Massey. And we are not using this process to get
7 criminal information. And if anybody thinks so, then
8 state the case.

9 We're trying to -- I'm trying to defend Mr. Farmer,
03:33:11 10 who is subject to an \$8 million disgorgement order and an
11 injunction.

12 THE COURT: I understand that.

13 MR. EDMUNDSON: I'd like to depose a guy who has
14 been speaking to the government for the past 18 months.

03:33:23 15 THE COURT: When did you first know that he was
16 speaking to the government?

17 MR. EDMUNDSON: After the indictment in September
18 of 2016, some months later the U.S. attorney's office
19 started giving us criminal discovery. The first pieces of
03:33:39 20 information we got were the 302s.

21 THE COURT: Well, why couldn't you have come to
22 me then and asked for him to be deposed?

23 MR. EDMUNDSON: Well, we did, Your Honor. We
24 did. Well, ask for a deposition at that point?

03:33:55 25 THE COURT: Of Massey.

1 MR. EDMUNDSON: Your Honor, I didn't do it. Like
2 I did with Mr. Grob, I did not ask for that; but I asked
3 for the same relief, the motion --

03:34:05

4 THE COURT: On Grob you never pushed that. I
5 wouldn't have allowed him to assert the Fifth. I mean, he
6 came in and testified. I remember the day he was here.

03:34:23

7 MR. EDMUNDSON: Your Honor, we thought that based
8 upon his testimony that he gave here, the Court's
9 observations and what Mr. Vydashenko said, that Mr. Grob's
10 statements were at odds with the complaint. We thought
11 that that was more than sufficient to move to vacate the
12 order. It was -- it was that simple.

03:34:41

13 And frankly, I thought that there was some validity to
14 the argument that they were making, which was simply this:
15 They weren't aware of the criminal investigation.

03:34:56

16 Mr. Grob's counsel asked the Court while we were here
17 during the remedies hearing right before he testified
18 whether or not there was the existence of a criminal
19 investigation. And as soon as he found out about that
20 proceeding, that's when he asserted five.

03:35:12

21 But more to the point, Your Honor, if we're looking
22 down the road and making some predictions, Mr. Grob is not
23 a defendant in the criminal case; and I expect he is going
24 to testify against Mr. Farmer.

25 THE COURT: Well, he was bad for Mr. Farmer the

1 day he was here, I thought, very bad for him. So I'm not
2 sure any further testimony from Grob is going to help your
3 client.

03:35:27

4 Have you got some reason to think Grob's testimony is
5 going to help your client?

6 MR. EDMUNDSON: I thought his testimony did help
7 us.

8 THE COURT: Oh, you did?

03:35:35

9 MR. EDMUNDSON: In our original motion to vacate
10 we explained why we thought that Grob's testimony was
11 helpful. For example, Mr. Grob testified about his
12 involvement in the registration process. And, Your Honor,
13 I'm going to be -- I haven't gone back and reread his --
14 reread his testimony in quite a while, but I have notes
15 here that he was involved in the registration process.

03:36:00

16 And the order says Grob was not included as a
17 recipient on any of the defendant's e-mails to Loev. The
18 point was -- the point there is that the SEC had made --
19 had made a statement in the undisputed facts that Mr. Grob
20 was not included in e-mail communications between

03:36:27

21 Mr. Farmer and counsel during the registration process,
22 and we provided evidence in the summary -- in the motion
23 to vacate that that just simply wasn't true. It's just
24 not true. It's not accurate. He was included. And we

03:36:48

25 provided the -- we attached in the appendix the e-mails

1 demonstrating that he was involved at every step of the
2 way. Moreover, and with respect to the press releases, he
3 was always involved in it and approved them.

03:37:07

4 The Pennaluna letter, the commission confronted
5 Mr. Grob at that -- during that remedies hearing with a
6 January 13th document to Pennaluna; and I think the
7 contention in the undisputed facts and in the order were
8 that Mr. Grob never had an opportunity to review the
9 letter or comment on it.

03:37:26

10 Well, we now know because we now have located
11 additional documents in which he signed the letter. And
12 it is not consistent with the idea that he never saw it or
13 didn't approve it or didn't have an opportunity to comment
14 on it. He signed the letter.

03:37:45

15 So I think -- and finally, of course, Mr. Grob said
16 that he thought that the press releases were true. That
17 was the real issue that we wanted to depose him on. That
18 would have been powerful, I think, for Mr. Farmer because
19 there are no allegations that Mr. Farmer issued false
20 press releases. He has to rely on other witnesses who
21 were involved in that process. And that's Mr. Grob, and
22 that's Mr. Massey.

03:38:01

23 Again, Your Honor, look, we didn't create the
24 situation; and we're not using the criminal process or the
25 civil process to obtain some advantage in the criminal

03:38:20

1 case. We're simply going where this takes us. We became
2 aware of the Massey situation late last fall, and we put
3 it before the Court in the renewed motion. In fact, the
4 notes that we attached we didn't even have until we filed
5 our rely brief.

03:38:43

6 THE COURT: Okay. On the press release, Page 20
7 says, "In each of the statements that violate
8 Section 17(a)(2), registration statement, press releases,
9 Forms 8-K and Chimera's statement to FINRA, Chimera made a
10 representation that was either blatantly false or grossly
11 misleading. Moreover, because the registration statement
12 and Chimera's letter to FINRA contained misrepresentations
13 regarding defendant's own actions --" in italics own
14 actions -- "there is no question that the defendant was
15 aware of the false or misleading nature of these
16 representations."

03:39:03

03:39:22

17 So there the opinion deals with the registration
18 statement and Chimera's letter to FINRA. Okay.

19 Then we go down, "Defendant knew that these documents
20 contained misrepresentations and material omissions
21 because the unrefuted evidence shows that he personally
22 prepared them."

03:39:37

23 I think they are still talking about the registration
24 and statement letter to FINRA.

03:39:51

25 "Although Grob or other Chimera agents ultimately

1 authorized, filed or published these statements, thereby
2 insulating defendant from *Janus* liability --" *Janus* is a
3 case name, J-a-n-u-s "-- the metadata on the registration
4 statement, many of the press releases and Forms 8-K and
5 the letter to FINRA reveal that these documents were all
6 drafted or edited by defendant."

7 There is a citation to the record, paren, "evidence
8 showing the defendant drafted and edited registration
9 statement." More citations to the record. Paren,
10 "evidence showing that the defendant drafted and edited
11 Form 8-K." More record citations. Paren, "evidence
12 showing the defendant drafted and edited letter to FINRA.
13 Because the defendant participated in the preparation of a
14 plainly false or misleading statement, the SEC has showed
15 that defendant must have been aware of the danger of
16 misleading the investing public, showing which is
17 sufficient to establish severe recklessness."

18 So I don't think it ever quite says Mr. Farmer drafted
19 the press releases. At one point it's a little ambiguous.
20 But drafted or edited. I mean, the press releases are
21 such a small part of the total data showing severe
22 recklessness, I'm not sure that by itself is enough to
23 upset the order; but I appreciate your pointing that out.

24 Anything further? I'll give Mr. Gulde another chance.

25 MR. EDMUNDSON: Your Honor, I don't. But, you

1 know, I think it's very difficult to isolate a handful of
2 facts and make a determination as to whether or not that's
3 going to absolutely upset the appplecart or change the --

03:41:50

4 THE COURT: Tell me what you think. You are an
5 experienced lawyer, and you are obviously a very smart
6 guy. Tell me what was going on. What was this -- what
7 was the strategy for building this company?

03:42:07

8 MR. EDMUNDSON: Well, I think the strategy was
9 Mr. Grob's strategy. He wanted to form a company, which
10 he did. He incorporated it, he founded it and he took the
11 majority shares.

12 He asked Mr. Farmer to consult with him to get him
13 some help because he had never done this before. That's
14 what Mr. Farmer did. Mr. Farmer made arrangements.

03:42:20

15 THE COURT: Well, where was the underlying value
16 for this company?

03:42:32

17 MR. EDMUNDSON: If you read the registration
18 statement, there wasn't much. The registration statement
19 is quite clear this was a start-up. I think it had
20 \$70,000 in the bank. It had a part-time officer who
21 committed himself to work ten hours a week. It had no
22 existing contracts.

03:42:49

23 THE COURT: Well, why was a company like -- why
24 was anybody out trying to find investors for a company
25 like that? Assuming everything you have said is

1 absolutely true, why would anybody lend his name to that
2 effort?

3 MR. EDMUNDSON: Because Mr. Grob believed at that
4 time in these drill bits; and he believed that he could
03:43:04 5 build a company based upon, I think, the drill bits of
6 some sort. That was his vision.

7 Now the vision later changed, as he testified here in
8 court, to transition into this NHE technology; but it was
9 his vision.

03:43:21 10 THE COURT: There was no reputable scientist or
11 engineer who said this was a working technology, right?
12 There was nothing, absolutely nothing.

13 MR. EDMUNDSON: Well, Your Honor, other than
14 China Inland, presumably, who gave them the licensed
03:43:34 15 technology, apparently a capsule; and Massey believes that
16 Haliburton had tested the same technology.

17 THE COURT: That's is such a vague reference
18 though. How does Massey know what Haliburton has tested?

19 MR. EDMUNDSON: I don't know, but I would like to
03:43:48 20 explore it with Massey. But that's the first time I am
21 hearing about it. It may prompt me to go to Haliburton
22 and say, Hey, have you ever looked at this technology? I
23 mean, it's his statement plus statements that might lead
24 to the discovery of additional evidence.

03:44:01 25 THE COURT: Okay. Thank you very much. Thank

1 you.

2 Yes, sir, Mr. Gulde.

3 MR. GULDE: May I address the new stuff here,
4 Your Honor? The Court asked a really good question of
03:44:22 5 Mr. Edmundson. You know, what is the alternate
6 explanation here? What is the legitimate explanation
7 here? And they trod out the same old thing. Mr. Farmer
8 is just a consultant here.

9 All you have to do is barely scratch the surface to
03:44:40 10 see that that is so far from the truth. It glosses over
11 so many things. Just off the top of my head in the few
12 seconds we have had here, Farmer financed it. He financed
13 the IPO. He didn't just raise money for it. He gave
14 loans to people.

03:44:55 15 THE COURT: Financed it and wasn't candid about
16 where the money was coming from.

17 MR. GULDE: Exactly, Your Honor. He didn't just
18 find investors. He also used Kylemore, this international
19 entity that he is admittedly the U.S. representative of,
03:45:14 20 to give Chimera its seed capital.

21 He also paid out of his own pocket Grob's salary. The
22 only money that Grob had coming in -- now that's another
23 interesting rabbit hole to dive down. Mr. Farmer in a
24 deposition said, oh, no, that was for Mr. Grob to go
03:45:33 25 search the UT archives for patents that we could make use

1 of. What capability Mr. Grob had shown to be able to
2 identify valuable patents to Mr. Farmer is a mystery to
3 me.

4 THE COURT: It's not in the record. It's not in
5 the record anyway.

6 MR. GULDE: And frankly, I mean, Mr. Farmer is a
7 lot of things; but he is not stupid. And the idea that he
8 would -- that he just believed in this and decided to
9 invest, you know, hundreds of thousands of dollars and
10 undertake this enormous undertaking to get people's money,
11 to use his own money to eventually get shares out of the
12 market just because he believed in Mr. Grob, that's
13 absurd, Your Honor.

14 A few of the points that Mr. Edmundson just brought up
15 about Mr. Grob that -- just the idea that some of the
16 things Mr. Grob said casts doubt somehow on the Court's
17 opinion that Mr. Grob had been -- had been on some e-mails
18 during the registration process with the lawyer. The
19 point is not that Mr. Grob is totally uninvolved. It's
20 that Mr. Farmer was himself deeply involved and hidden.
21 Nobody on the outside knew that he was deeply involved.

22 As to the Pennaluna letter, that January 13th thing
23 that Mr. Edmundson was talking about, the evidence shows
24 that Mr. Farmer didn't give Grob time to review a letter
25 that they eventually sent to Pennaluna. It was sent on

1 January 13th. It's beyond dispute that Mr. Grob didn't
2 have time to review it on January 13th. Eventually, a
3 signed copy of this document shows up in February; but
4 between January 13th and February, the only reasonable
5 conclusion is that -- and Mr. Farmer was pulling those
6 strings and, you know, not really letting Mr. Grob drive
7 the car.

8 Mister -- he points to -- well, I guess Page 20 of the
9 order is the only other thing I have written down. Your
10 Honor parsed that. I agree that the use of the word
11 "press releases" there may be a little ambiguous. I have
12 no objection to you striking the word "press releases"
13 there because all of the string cites of record cites
14 following that don't point to the press releases. So that
15 doesn't look like a problem to just -- if you are to amend
16 your order, Your Honor, to pull the press releases out of
17 it.

18 THE COURT: We have the re-arraignment on
19 Tuesday; is that right?

20 MR. GULDE: That's my understanding, Your Honor.

21 THE COURT: Is it here in the southern district?

22 MR. GULDE: Yes. It's in front of Judge Gilmore.

23 MR. EDMUNDSON: Judge Gilmore.

24 THE COURT: The allegations here are very
25 serious. I have not heard anything today or in the

1 writings that make me think the memorandum and order of
2 October 7th, 2015, are incorrect. Whether we can get any
3 more of the story as this case proceeds, I don't know
4 that.

03:49:18 5 Again, I haven't seen anything to make me think we are
6 going to get anything that is going to exonerate
7 Mr. Farmer except maybe at the edges. Maybe he did not do
8 this or did do that and we were wrong about some of the
9 details.

03:49:35 10 But the overall picture, I just don't see another way
11 to look at it. The evidence is overwhelming. It was a
12 classic pump-and-dump. If it were not, I don't know why
13 Mr. Farmer was so careful about concealing his role.

14 Before entering a written order, I will ask the
03:49:57 15 parties to submit to me the transcript of Mr. Massey's
16 re-arraignment on Tuesday; and I'll make a ruling then.

17 MR. GULDE: Thank you, Your Honor. Nothing
18 further.

19 THE COURT: Thank you.

03:50:34 20 (Proceedings concluded at 3:50 p.m.)

21 *Date: April 30, 2017*

COURT REPORTER'S CERTIFICATE

22 *I, Laura Wells, certify that the foregoing is a*
23 *correct transcript from the record of proceedings in the*
above-entitled matter.

24 */s/ Laura Wells*
25 *Laura Wells, CRR, RMR*